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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,893	03/06/2002	Sazanne M Bosze	23319.02	2750
7590	05/22/2006		EXAMINER BOYCE, ANDRE D	
R Lewis Gable Cowan Liebowitz & Latman 1133 Avenue of the Americas 35 th Floor New York, NY 10031			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,893

Applicant(s)

BOSZE, SAZANNE M

Examiner

Andre Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-5 have been examined.

Specification

2. The disclosure is objected to because of the following informalities: The Brief Description of the Drawings is missing. Appropriate correction is required.

Claim Objections

3. Claim 1 is objected to because of the following informalities: The use of the numerals 1-5 in the body of the claim is confusing. The Examiner suggests using Roman numerals, i.e., (i), (ii), (iii), etc. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered vague and indefinite for use of the phrase "product/service." This language is unclear and somewhat confusing, since the Examiner is not sure what Applicant is attempting to claim. Claims 2-5 are rejected based upon the same rationale, since they depend therefrom.

Claim 1 recites the limitation "the size" in line 9 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the market" in line 9 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the particular product" in line 9 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said frame" in line 10 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the major brands" in line 11 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the entire market" in line 12 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the share" in line 14 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the profit level" in line 16 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the current profit level" in line 18 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the marketing" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the development" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garg (USPN 6,044,357) in view of Asplen, Jr. (USPN 6,044,354).

As per claim 1, Garg discloses a method of devising on a computer a marketing plan for a particular product/service provided by a given entity (i.e., selection of a marketing strategy, column 4, lines 40-42), said method comprising the steps of (a) defining one or more variables that are used to carry out said method (column 5, lines 57-59); (b) creating a series of charts for implementing a process of analyzing said defined variables (i.e., matrix of marketing mix variables, column 5, lines 60-65); (c) defining a product name (i.e., advertising campaigns for each brand, column 5, lines 19-23), a time frame over which a process of analysis is carried out (i.e., index t referring to time period, column 5, line 60); (d) said process of analyzing including the steps of 1) analyzing the size of the market for the particular product and forecast the size of the market within said frame (i.e., firm knows size of the market, column 4, lines 54-57); 2) identifying the major brands of said particular product within a given geographic unit (i.e., firm sells one or more brands within a category, wherein the firm employs different strategies for the brands based upon segment,

column 4, lines 50-54); 3) determining the share of said entire market of said particular product marketed by the entity (i.e., market share model, column 5, lines 27-30); 4) setting goals as to the profit level of the particular product of said entity (i.e., feasible marketing strategy that provides largest expected profit, column 13, lines 36-40); and 5) monitoring the current profit level of said particular product with said profit level goals (i.e., calculation of net profit or loss over each time period, column 13, lines 26-30). Garg does not explicitly disclose a geographic unit in which said product is marketed and calculating the entire market for said particular product with said given geographic unit. Asplen, Jr. discloses multiple product launches for various geographic locations and a launch analysis for each location (column 4, lines 30-32), wherein the launch analysis includes market segment information and market size information (figure 4). Both Garg and Asplen, Jr. are concerned with marketing strategy of a product, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a geographic unit in which said product is marketed and calculating the entire market for said particular product with said given geographic unit in Garg, as seen in Asplen, Jr. as an effective means of determining geographical implications of a market strategy, thus making Garg more flexible and robust.

As per claim 2, Garg discloses wherein if the current profit level is below said profit level goals, discontinuing the marketing of said particular product (i.e., marketing strategy labeled as not viable or infeasible, column 13, lines 32-35).

As per claim 3, Garg discloses developing a marketing strategy for said particular product (i.e., selection of a market strategy, column 4, lines 40-42).

As per claim 4, Garg discloses marketing strategy is a function of the following strategies: the development of said particular product (i.e., operations division 14 that purchases inventory, column 5, lines 22-23), setting its price (i.e., pricing strategy, column 4, lines 54-59), determining its distribution (i.e., model used to characterize the distribution of demand, column 7, lines 44-48), planning its advertising and determining its promotion strategy (i.e., promotion strategy, column 4, lines 54-59).

As per claim 5, Garg discloses the current profit level of said particular product is compared with said profit level goals and, if less, adjusting one or more of said strategies (i.e., identification of a feasible marketing strategy from the matrix, column 13, lines 36-40).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Lee et al (US 2002/0072951) disclose collecting, analyzing and presenting data.

-Woo et al (USPN 6910017) disclose a maximum profit is predicted by optimizing the price and/or inventory.

-Geerlings (USPN 5956693) discloses automated merchant-to-merchant customer communication.

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-Ruffin et al (USPN 6249769) disclose evaluating the business requirements of an enterprise.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (571) 272-6726. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

adb
April 29, 2006


ANDRE BOYCE
PATENT EXAMINER
A. U. 3623